

P-3020/NA-90-90 ESTABLISHING FILING PERIOD FOR VERIFIED INFORMATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of a Request for a Certificate of Convenience and Necessity to Provide Operator, Directory Assistance and Long Distance Services

ISSUE DATE: June 26, 1990

DOCKET NO. P-3020/NA-90-90

ORDER ESTABLISHING FILING PERIOD FOR VERIFIED INFORMATION

**PROCEDURAL HISTORY**

On February 15, 1990, NCN Communications, Inc. (NCN or the Company) filed a petition requesting a certificate of public convenience and necessity to resell directory assistance, operator, and long distance services.

On April 16, 1990, the Minnesota Department of Public Service (the Department) filed its report of investigation and recommendations requesting that the Commission disapprove the Company's petition and order the Company to cease and desist operations in Minnesota.

On April 30, 1990, the Company filed its response to the Department's report and recommendations including an affidavit from the Company's Vice-President, Jeffrey Williams.

On or about May 15, 1990, the Department filed comments responding to the Company's April 30, 1990 filing.

On June 7, 1990, the Department filed a comparison of NCN rates and MCI charges in support of its concerns.

On June 12, 1990, the Commission met to consider this matter.

**FINDINGS AND CONCLUSIONS**

**A Certificate of Convenience and Necessity is Required**

Although the Company filed a petition for a certificate of convenience and necessity pursuant to

Minn. Stat. § 237.16 (1987), the Company later asserted in its April 30, 1990 filing that it is not required to secure such a certificate because it proposes to offer only "competitive" services. The Company argued that new "telephone companies" are simply required to register with the Department of Public Service and the Commission and that pursuant to Minn. Stat. § 237.64 the Company had the right to operate in Minnesota beginning 90 days after the date it filed its application with the Department. The final sentence of Minn. Stat. § 237.64, subd.1 states:

A person, firm, or corporation seeking to offer a noncompetitive service to the public must obtain authority from the commission under section 237.16.

The Commission disagrees that Minn. Stat. § 237.64 exempts the Company from the requirement of obtaining Commission certification prior to operation pursuant to Minn. Stat. § 237.16. The statute cited by the Company, Minn. Stat. § 237.64, Subd. 1 (1989), provides a registration procedure for persons, firms or corporations that are "not required to be certified under Minn. Stat. § 237.16" but does not explicitly exempt providers of competitive service from the certificate requirements of Minn. Stat § 237.16. Nor does the Commission believe that the final sentence of Minn. Stat. § 237.64, subd. 1 may be interpreted as providing an exemption for providers of competitive services as the following analysis indicates:

Minn. Stat. § 237.16 states the general requirement that any telephone company seeking to operate in a locality where there is another telephone company already in operation must first obtain a certificate from the Commission that the public interest requires the proposed additional service. Exemptions from such a general statutory requirement must be explicit. In the case of shared tenant service providers, the legislature explicitly exempted shared tenant service providers from the certification requirement. Minn. Stat. § 237.68. subd. 5 (1988). By contrast, telephone companies such as the Company that seek to provide competitive services such as long distance service have no such explicit exemption. The final sentence of Minn. Stat. § 237.64, subd. 1 is simply explanatory and no exemptive intent may be inferred.

Accordingly, the Company's petition for authority to provide operator, directory assistance and long distance services is properly before the Commission.<sup>1</sup>

#### Matters in Dispute Require Further Development

Due to significant disputes regarding facts relevant to a determination of this petition, the Commission will establish a period for the submission of verified information.

Financial Stability---In its report of investigation and recommendation and in follow up comments to the Company's response to that report, the Department made certain allegations regarding the financial stability of the Company. The Department stated its concern that the Company would not be able to cover its costs of toll service and the costs of its multi-level

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<sup>1</sup> The Company proposes to resell long distance telephone services in Minnesota. The filing requirements for long distance reseller applicants are set forth in the Commission's ORDER ESTABLISHING RESELLER APPLICATION REQUIREMENTS issued In the Matter of an Investigation by the Minnesota Public Utilities Commission into the Resale and Sharing of Intrastate Wide Area Telecommunications Service, Docket No. P-421/CI-82-619 (July 13, 1983).

marketing program and provide adequate service without contribution from the sales of training packages. The Department was further concerned that if the Company's total usage was not sufficient on a national basis, the Company might not qualify for a sufficient discount from MCI to cover all the Company's variable costs. The Company has denied these allegations.

Customer Service---The Department has also raised issues involving customer service, particularly the adequacy and accuracy of information that the Company provides its potential customers.

### Commission Action

The Commission believes that these concerns are substantial and that the Company should be allowed to file information in response to these concerns. To promote the usefulness of the information submitted, the Commission will authorize any interested party to submit information in the form of affidavits or verified pleadings within 30 days of the date of this order. The filings will address the financial stability issues raised by the Department and the following subjects:

1. the training that Company distributors receive to respond to customer questions and complaints;
2. the methods the Company will use to address a customer's questions or complaints;
3. the adequacy of the Company's 800 number in addressing these concerns;
4. the Company's compliance with Minn. Rules, part 7810.1000 which addresses the types of information that must be available to customers at a telephone company's business office;
5. the experience of other states where the Company is providing service and where the Company has been denied authority to provide service; and

6. regarding the Company's application for authority to provide operator service, a comparison of the Company's proposed rates to those of AT&T, and other Commission requirements related to the provision of operator service.

**ORDER**

1. Within thirty (30) days of the date of this Order, NCN Communications, Inc. shall file affidavits or verified pleadings in response to the Department of Public Service's filed allegations regarding NCN's financial stability, the Department's June 7, 1990 filing, and the six (6) subjects delineated in the text of this Order.
2. Within thirty (30) days of the date of this Order, the Minnesota Department of Public Service shall and any interested party may file affidavits or verified pleadings which address the six (6) subjects delineated in the text of this Order and the filings of NCN Communications, Inc. in support of its application for authority to provide operator, directory assistance and long distance service in Minnesota.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

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